IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

FIRST APPEAL NO.232 OF 1985

1. A.R. Subrao

2. The Oriental Insurance Co. Ltd. ... Appellants

V/s.

1. Smt.Shalini Hanmant Sinkar
2. Shri Rajiv Hanmant Sinkar
3. Miss Hema Hanmant Sinkar
4. Shri Milind H. Sinkar
5. Shri Mohiddin Fakir Abba
6. Shri J.B. L. Alburquerque ... Respondents

Mrs.Anita A. Agarwal for Appellants
Ms.S.V. Sonawane for Respondent Nos.1 to 4

a/w
CROSS OBJECTION (STAMP) NO.20293 OF 1986
IN
FIRST APPEAL NO.161 OF 1986

Mr.J.B.E. Albuqureque ... Appellants

V/s.

1. Smt.Shalini Hanumant Sinkar
2. Rajeev Hanumant Sinkar
3. Miss Hema Hanumant Sinkar
4. Mohiddin Fakir Abba
5. National Insurance Company Ltd.
7. Mr.Buran Mohamed Abdul Nasir Sayyed
8. A.R. Subarao
9. Oriental Insurance Co. Ltd. ... Respondents

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **DECEMBER 17, 2004**

ORAL JUDGMENT:

. The present First Appeal arises out of the award of the Motor Accident Claims Tribunal granting

compensation to the Respondent-claimants. The trial Court had granted an amount of Rs.147,000/- together with interest @9% per annum.

2. The facts involved in the present case are as follows:

A motor taxi bearing No.MRO-9590 was proceeding along the national highway from Pune to Mumbai. Respondent No.1 is the wife of the deceased. Respondent No.2 is the son of the deceased and Respondent No.3 is the father of the deceased. The husband of Respondent No.1 and the father of the other respondents was seated in the taxi on the left rear seat. The taxi collided with the goods truck bearing No.MYA-9751. Both the vehicles were proceeding in the opposite directions and the accident occurred on the national highway. As a result of the collision, the passengers on the left side of the taxi including the deceased Hanumant Sinkar and one Satish Bhide who was sitting in the front seat of the same taxi died of the injuries sustained by them. Hanumant Sinkar died on the spot whereas Bhide was hospitalised and died in hospital.

3. The respondents filed claim application No.177 of 1979 before Motor Accident Claims Tribunal claiming an amount of Rs.2 lacs alongwith interest as

compensation. The respondents claim that it was on account of the rash and negligent driving of the drivers of both taxi as well as the truck that the accident had occurred which resulted in the death of Hanumant Sinkar.

4. The Claims Tribunal after recording evidence held that the respondents were entitled to Rs.147,000/- with interest @9% per annum. The Tribunal held that both the drivers had driven their vehicles rashly and negligently resulting in the accident and the death of Hanumant Sinkar. The Tribunal further held that the liability of the Insurance Company and the taxi was restricted to Rs.10,000/-. It further came to the conclusion that opponent Nos.1 to 5 and 7 that is the owner driver and insurance company of both the vehicles were jointly and severally responsible for the accident.

5. Aggrieved by this award, the insurance company for the truck, that is Oriental Insurance Company, has filed the present appeal. An appeal being First Appeal No.161 of 1986 was also filed by the owner of the taxi which has been dismissed as the appellant had died and the heirs of the appellant had not been brought on record.

6. Mrs.Agarwal, appearing for the Insurance Company, that is the appellants herein, submits that the

award has been made without considering the responsibility or liability of each of the vehicles. She submits that the truck was proceeding along the Bombay - Pune Road on the right side of the carriage way and a taxi dashed into the truck causing the accident. She submits that had it not been for the negligence of the taxi driver, the accident would not have occurred. According to the learned Counsel, the taxi had suddenly appeared in front of the oncoming truck, while overtaking two trucks which were proceeding in the same direction as the taxi. She submits that it was obviously an error of judgment on the part of the taxi driver which caused the accident since he was not able to get back into line with the traffic proceeding to Pune quickly enought to prevent the accident. According to her, the truck driver had in everyway tried to avoid the accident and had in fact swerved the truck to the left side of the road in order to avoid the collision. The truck driver while doing so had dashed against a tree which is recorded in the evidence. She, therefore, submits that the proportionality of the claim for the accident could not be joint and several and the truck driver ought to be absolved of all liabilities. The truck driver and consequently the insurance company have to be absolved of the liability, according to the learned Counsel.

7. Ms.Sonawane, appearing for Respondents, submits that the accident was not attributable to the deceased. as they were mere passengers in the taxi and could not be saddled with any blame. She submits that the accident had occurred on account of the negligence of both the truck driver as well as taxi driver and this amounts to composite negligence on their part. According to her, the Tribunal has rightly held that the liability was joint and several and therefore, cannot be faulted. In support of her proposition, Ms.Sonawane relies on the judgments in the cases of *Shakuntala S. Shetty v/s. State of Maharashtra,* **1976 A.C.J. 368**; *Manjula Devi Bhuta & Anr. v/s. Majusri Raha & Ors.,* **1968 ACJ 1;** *Manjushri Raha & Ors. v/s. B.L. Gupta & Ors.,* **1977 ACJ 134;** *Chhaganlal Nathubhai Patel v/s. Bhagirath Kheraji & Ors.,* **1993 ACJ 1152**; *New India Assurance Co. Ltd. v/s. Bajrang Kumar Gupta & Ors.,* **1993 ACJ 1157**; *General Manager, Karnataka State Road Transport Corporation v/s. Krishnan & Ors.,* **1981 ACJ 273**; *Minor Harshvardhatiya Rudratitya v/s. Jyotindra Chimanlal Parikh & Ors.*, **1981 ACJ 277;** *General Manager, Keral State Road Transport Corportion v/s.Susamma Thomas & Ors.*, **1994 ACJ 1** and *National Insurance Co. Ltd. v/s. Baljit Kaqur & ors.*, **2004 ACJ 428.**

8. The Tribunal has considered the evidence of the first applicant and who was examined on behalf of her

son and the other applicants as well. The Respondent taxi-owner was examined Damu Kondiba Gaikhe purported to be an eye witness. The Tribunal has discarded the evidence of Gaikhe in its entirety as it found that this witness had no knowledge of the accident. The Tribunal was of the view that Damu Gaikhe was obviously a tutored witness by the owner of the taxi and no reliance could be placed on his evidence. The Tribunal then considered the spot panchanama in which it was recorded that the left side of the taxi was severely damaged and that it had been found on the right side of the road on the carriage way. The Panchanama also reports that the truck was damaged on the right side and it has swerved to the left side of the road and hit a tree. Thus, in fact, the Tribunal accepted the version of the witness Mohit Goyal who was proceeding in the same taxi but was sitting on the right side. Both he and the taxi driver escaped with some injuries. The Tribunal was impressed with the fact that this witness being an independent witness and impartially deposed stating how the accident had in fact occurred. All these factors led the Tribunal to believe that the impact between the two vehicles itself showed that both the vehicles were speeding along when they met with the accident. The Tribunal also considered the fact that the impact and the damage caused to the vehicles justified this finding that the vehicles had been proceeding in a very fast

speed. The Tribunal, therefore, held that the evidence clearly established that in fact the collision between the offending taxi and the truck was on account of the rash and negligent driving on the part of both the drivers.

9. These findings of the Tribunal cannot be faulted if indeed the taxi had darted out from the line of the traffic as submitted by Mrs.Agarwal and had come head on in the path of the oncoming truck, there was sufficient time for the truck driver to avert the accident by braking and then swerving to the left. The Panchanama does not indicate that there was tyre marks present on the road. Obviously, therefore, the truck driver must not have braked in order to avoid the accident but proceeded in the same speed and merely swerved to the left. This, therefore, does not absolve the truck driver and consequently the owner of the truck and the insurance company of the liability. Obviously, the truck could not be halted in time and the accident averted because the truck was proceeding in a very fast speed and there was insufficient time for the truck driver to avert the accident. There is nothing on record to indicate that the driver of the truck had braked or had taken sufficient steps, with due care and diligence, in order to avert the accident. That being the position, I am unable to accept the submission of

Mrs.Agarwal that the responsibility of the appellants was much less than the taxi driver. The Tribunal has not erred in making the award and making the appellants jointly and severally responsible with the other respondents.

10. In the case of *Manjula Devi Bhuta v/s. Manjusri Raha & Ors.* (supra), the Madhya Pradesh High Court considered the difference between "composite negligence" and "contributory negligence". The High Court observed that where a person is injured without any negligence on his part but by a combined effect of the negligence of other persons, it would not be a case of ’contributory negligence’ but ’composite negligence’. The High Court was of the view that the term ’contributory negligence’ applies solely to the conduct of the plaintiff and the plaintiff had been responsible for an act or omission which materially contributed to the damage. This judgment of the Madhya Pradesh High Court was confirmed by the Supreme Court in *Manjushri Raha & Ors. v/s. B.L. Gupta & Ors.* (supra) The Apex Court came to the conclusion that the finding of the High Court on the question of contributory negligence and composite negligence could not be faulted and in fact, observed that the time was ripe for serious consideration of creating ’no fault liability’. The facts in the case

before the Madhya Pradesh High Court are similar to the present case. The accident in that case had occurred because of the head on collision between two vehicles. Neither of the drivers had slowed down and the vehicles collided resulting in the death of the passengers in the bus. It appears that the defence of one of the drivers was that he was not responsible for the accident as he had kept to the extreme left. The High Court observed that this did not exonerate him of his duty to avoid accident.

11. In the present case also, the defence of the truck driver or the insurance company is that the truck was proceeding correctly on the carriageway from the Pune to Mumbai and that he could not have avoided the accident. The truck driver being on a higher plane, could certainly have spotted the taxi overtaking two trucks and could have braked in time in order to avoid the accident. The independent witness has stated that the taxi had in fact overtaken both the trucks and before it returned to the main carriageway, the oncoming truck has collided against it. Therefore, the submission of the learned Counsel for the appellant cannot be accepted and the driver of the truck was equally responsible for the accident.

12. For these reasons, the Appeal, therefore, must

fail.

13. The next question is whether the cross objections seeking an enhancement of the compensation should be granted. The evidence on record shows that the deceased was earning Rs.2175/- as his monthly salary and was in the computer industry. Ms.Sonawane submits that the computer industry being a fast growing industry would definitely have resulted in the deceased rising in his position in the industry as well as commanding a better payment. At the time of the accident, he was fitted in the scale of Rs.1575 - Rs.3000/-. She, therefore, submits that in any event, if the total salary is considered at the time of the accident the deceased was earning Rs.4000/- per month which included the basic wages, Dearness Allowance and H.R.A. She submits that even taking just the basic wage and not considering the effect of escalation of the D.A., the Tribunal ought to have calculated the compensation on a total salary of Rs.4,000/-. According to her, assuming the deceased had retained 1/3rd of his salary for himself, by taking Rs.3,250/- as the remainder and using 8 as multiplier, the amount of Rs.2,40,000/- ought to have been granted. She further submits that the Tribunal has erred in granting the deceased an amount of Rs.1,47,000/- with interest and, therefore, presses the cross objections.

14. The submission of Ms.Sonawane will have to be accepted. There is no doubt that the deceased was earning in the bracket of Rs.1575 - Rs.3000/-. His monthly salary was around Rs.4,000/- and, therefore, the life dependency would be Rs.3250/- per month. Using ‘8’ as multiplier and the consequent life expectancy, an amount of Rs.2,50,000/- could have been granted by the Tribunal if such a claim had been made. The claim filed before the Tribunal is for an amount of Rs.2,00,000/- only. Therefore, in the light of the earlier observations the entire claim will have to be granted. The Tribunal had awarded Rs.1,47,000/- together with interest @9% per annum. The Respondent-Insurance Corporation and the owners of the vehicles are jointly and severally responsible for making payment of the balance amount of Rs.53,000/- together with interest @9% per annum.

15. In these circumstances, the award of the Tribunal is modified to the extent aforesaid. Appeal and the Cross-objection are disposed of accordingly.